

10-7-85

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

-----X  
)  
IN THE MATTER OF )  
)  
Resource Management, Inc. )  
(previously known as )  
Servicios Carbareon, Inc.) )  
Penuelas, Puerto Rico )  
PR091018622 )  
)  
Respondent )  
)  
Proceeding under §3013 of the )  
Resource Conservation and )  
Recovery Act (42 U.S.C. §6934) )  
)  
-----X

ADMINISTRATIVE ORDER  
ON CONSENT

Index No. II RCRA-85-50301

JURISDICTION

This Administrative Order on Consent ("Order") is entered into with Resource Management, Inc. ("Resource Management" or "Respondent") pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 3013 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended ("RCRA"), 42 U.S.C. §6934. This authority has been delegated to the Regional Administrator, Region II. Respondent neither admits nor denies the allegations contained in this Order. The Commonwealth of Puerto Rico, through the Environmental Quality Board ("EQB"), has previously been notified of this Order.

FINDINGS

1. Respondent owns and operates a facility at Carr 385, Km5 Hm5 Tall Aboa, Penuelas, Puerto Rico, 00724 ("the facility")

2. By notification dated September 15, 1980, Respondent informed EPA that it conducts storage, treatment and land disposal activities at the facility involving "hazardous waste" as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and in 40 CFR §261.3. By application dated November 11, 1980, Respondent qualified for interim status.

3. On or about March 21 and 22, 1984, an inspection of the facility was conducted by duly-designated representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. §6927. Said inspection was conducted for the purpose of assessing Respondent's compliance with the EPA regulations for hazardous waste management, 40 CFR Parts 260 through 265 and 270 (published in 45 Fed. Reg. 33073 et seq., May 19, 1980, and as later amended), promulgated pursuant to Subtitle C of the Act, 42 U.S.C. §6921 et seq. During that inspection, personnel from EPA collected samples including five soil samples, two grab samples from the facility's oil lagoon and four grab samples from the facility's ground water monitoring wells. The EPA analyzed these samples for organic compounds and metals. It also performed EP toxicity analyses and ignitability testing. The results of EPA's tests are set forth in Attachment 1 ("EPA Sampling Results"). Due to a lack of adequate containers, split samples could not be accepted by Resource Management.

4. 40 CFR §270.10(e)(4) states, in relevant part, that EPA may require the owner or operator of an existing treatment, storage or disposal facility to submit Part B of its permit application

("Part B"). Any owner or operator shall be allowed at least six months from the date of the request to submit Part B of the application.

5. By letter dated February 4, 1983, EPA requested the submittal of Respondent's Part B by August 13, 1983.

6. By letter dated July 27, 1983, Respondent requested an extension until September 15, 1983 for submittal of the Part B.

7. EPA agreed to Respondent's requested extension.

8. Under cover of a letter dated September 15, 1983, Respondent submitted its Part B application.

9. The facility has eight "landfills" which contain "hazardous waste," as those terms are defined in 40 CFR §260.10. Of these eight landfills, five are drum-burial landfills and three are characterized as "immobilization facilities" by the Respondent. All eight hazardous waste landfills were constructed without any synthetic or compacted natural material thus providing the potential for direct communication of the hazardous waste with the environment.

10. The facility has two hazardous waste storage areas used for the storage of 55 gallon drums. The results of the EPA sampling referred to in Paragraph 3, above, indicate the presence of both organic and metal hazardous wastes, including chromium, bis (2-ethylhexyl) phthalate, lead, and toluene in samples



taken in the soil proximal to both storage areas. The inspection also revealed that there are inadequate containment facilities surrounding the storage areas, which Respondent has previously agreed to upgrade, which will minimize the migration of the contamination.


11. The facility has three hazardous waste "surface impoundments," as that term is defined in 40 CFR §260.10. One of these surface impoundments was sampled by EPA during the inspection referred to in Paragraph 3, above. The EPA Sampling indicated the presence of numerous hazardous waste constituents in this surface impoundment, including phenanthrene, 1,1,1 trichloroethane, and bis(2-ethylhexyl) phthalate. All three surface impoundments containing hazardous waste were constructed without any synthetic or compacted natural materials, thus providing the potential for direct communication of the hazardous waste with the environment.

12. Respondent developed and installed a groundwater monitoring system in 1981. Subpart F of 40 CFR Part 265 requires Respondent to have installed a groundwater monitoring system capable of immediately detecting any migration of hazardous waste or hazardous waste constituents in the groundwater from the regulated hazardous waste units. EPA alleges that the groundwater monitoring system installed by Respondent is not capable of detecting migration of hazardous waste or hazardous waste constituents, as required by Subpart F of 40 CFR Part 265. (EPA's evaluation of Respondent's groundwater monitoring system is set forth in Attachment 2).

13. The EPA sampling referred to in paragraph 3, above, indicates the presence of hazardous waste constituents in certain monitoring wells, including bis (2-ethylhexyl) phthalate in well number 11W83 and in well number 1W81.

14. A natural drainage channel exists at the facility. According to information submitted to EPA by Respondent, this channel is the natural discharge point for all surface water draining from the site. (Attachment 3). This document also states that any release of hazardous wastes from the site could discharge into this channel. No analytical results from sampling of the channel have been requested by EPA or taken by Respondent. This document further states that the drainage channel enters the lower Tallaboa River basin where it can potentially percolate into the stream bed.

#### DETERMINATION



1. Hazardous waste and/or hazardous waste constituents are present at the facility. The release of any such waste from the facility may present a substantial hazard to human health or the environment. EPA has determined that it is necessary to obtain more information concerning the hazardous wastes at the facility and the potential effect of such hazardous wastes on human health and the environment.


2. The Regional Administrator has determined that the monitoring, testing and reporting requirements of this Order, to be developed pursuant to a Work Plan, developed by Respondent and

approved by EPA, are reasonable and necessary in order to ascertain the nature and extent of any substantial hazard to human health or the environment.

ORDER

Geological/Hydrogeological Investigation

1. Within five (5) days of the effective date of this Order, the Respondent shall submit to EPA, the first phase of phased Work Plans for conducting a hydrogeological investigation at the facility (the "Work Plan"). The Work Plan shall be structured to evaluate both geologic and hydrogeologic conditions at the facility with the intent to develop an understanding of the site sufficient to allow design of an adequate groundwater monitoring plan. The first Work Plan submittal shall also include a phased program outline for the assessment of surface water at the site, including the natural drainage channel, a program for sampling surface soils in the vicinity of regulated units, and details for well design, construction and development, with specific schedule milestones, including the submittal of future phases of the Work Plan.



A. A program will be developed in the Work Plan and subsequent Work Plan submittals to evaluate the geology; it shall be designed to adequately define the thickness and physical properties of the deposits above the metamorphosed limestone unit and the possible presence and extent of faulting, if any. The Work Plan and subsequent Work Plan submittals shall provide for:




- i. Test borings in the valley area occupied by the facility, locations and number of which will be specified in the Work Plan and subsequent Work Plan submittals.
- ii. Some of the borings should be terminated in the underlying metamorphosed limestone, as specified in the Work Plan and subsequent Work Plan submittals.
- iii. Rock core will be obtained from the base of each boring, as specified in the Work Plan and subsequent Work Plan submittals.
- iv. Installation of deep test borings in adjacent upland areas, locations and depth of which will be specified in the Work Plan and subsequent Work Plan submittals.
- v. Soil sampling of the geologic units during boring, as specified in the Work Plan and subsequent Work Plan submittals.
- vi. The presence of a qualified geologist or geotechnical engineer at the installation of all boreholes to describe samples collected and maintain a continuous field log of the boreholes, as specified in the Work Plan and subsequent Work Plan submittals.
- vii. Collection of undisturbed samples from boreholes for the performance of certain laboratory tests, as specified in the Work Plan and subsequent Work Plan submittals.



- viii. Collection of soil samples for grain size analysis from boreholes, as specified in the Work Plan and subsequent Work Plan submittals.
  - ix. Collection and preservation of soil samples from boreholes for chemical analysis, as specified in Work Plan and subsequent Work Plan submittals.
- B. A program will be developed in the Work Plan and subsequent Work Plan submittals to evaluate the hydrogeologic properties and water quality of the saturated zone(s) beneath the facility. The program shall provide for:
- i. A report compiling, evaluating, and summarizing existing and past hydrogeological information, including water quality, well log and boring data and monitoring well and system adequacy, to be submitted within 45 days of the effective date of this Order.
  - ii. Installation of additional wells or piezometers within the facility area; screened in the saturated zone(s) in order to further assess groundwater flow conditions.
  - iii. Procedures for well and piezometer installation, construction and development.
  - iv. Procedures for measuring water levels in the wells and top of casing elevations within 0.01 foot in order to define groundwater flow directions in the saturated zone(s).

A handwritten signature, possibly reading "J. B. Smith", is located on the left margin of the page.




- 
- v. Procedures for a series of in-situ tests for estimating hydraulic properties of the saturated zone(s).
  - vi. Procedures for laboratory tests on undisturbed samples for determining permeabilities of the clay deposits, as adjusted for site soils conditions.
  - vii. Procedures for well and piezometer evacuation, sample collection, sample handling and shipment to include descriptions of equipment, decontamination, containers, quality assurance/quality control, laboratory QA/QC and testing methods.
  - viii. Procedures for data evaluation of the groundwater sampling results, including statistical analysis of the sampling data.
  - ix. Procedures for conducting a geotechnical study of soil permeability near the proposed base of facility IM-2 (already underway).
  - x. Analysis of July groundwater sampling results from laboratory.
  - xi. Installation of groundwater monitoring wells around proposed immobilization facilities.
- C. A program in the Work Plan and subsequent Work Plan submittals will be developed for the assessment of the surface water at the facility, including the natural drainage channel. The program shall include:

- i. Procedures for determining flow rates in the natural drainage channel.
- ii. A sampling and analysis plan for the natural drainage channel to include parameters, sample frequency and sampling location.
- iii. A program for sampling sediment in the ditch base.

D. Within sixty (60) days of the effective date of this Order, a program will be developed in the Work Plan and subsequent Work Plan submittals to determine the horizontal and vertical extent of contaminated soil surrounding each storage and disposal unit, whether active or inactive. The program shall include:

- i. Soil sample locations, with a narrative on the rationale for selected locations.
- ii. Proposed parameters based on the waste constituents contained in the unit near to which the samples will be taken.



2. Within fifteen (15) days of the effective date of this Order, Respondent shall submit a Health and Safety Plan covering the field work required by this Order.

3. EPA will review each phase of the Work Plan and Health and Safety Plan and submit necessary and reasonable comments on the proposed hydrogeologic investigation, soil investigation and the surface water assessment program.

4. Within ten (10) days of receipt of EPA's written comments, Respondent shall address EPA's comments on the Work Plan and make revisions as necessary. Respondent shall then resubmit the Work Plan and subsequent Work Plans to EPA and upon EPA approval, they will become the final Work Plans to be implemented.

5. Respondent shall, as per the schedule contained in the approved Work Plan, implement the approved Work Plan and subsequent Work Plan submittals pursuant to the schedule contained in the approved Work Plan. During the investigation, the Respondent shall prepare and submit to EPA, bi-weekly (every 2 weeks) progress reports detailing the work completed.

6. Upon completion of each phase of the investigation, the Respondent shall prepare a report on the findings of the site investigation. The reports shall contain a description of the field investigation, including sampling procedures, boring procedures, soil sampling methods, etc. Each report shall contain the results of all testing, including testing of soils for physical and chemical properties, groundwater monitoring and level data and in-situ hydraulic conductivity analysis and lab permeability tests. The reports shall reduce and evaluate data, including, at a minimum, the construction of isopath and structural contour maps, cross sections showing hydrogeologic units, maps showing groundwater flow directions, tabulations of sample results and estimates of groundwater flow based on permeability determinations. The reports shall assess relative risks posed by the sites, including identification of contaminant plumes, if



any, evaluation of contaminant migration potential and possible receptors at risk. Each report shall make recommendations for further study, if appropriate. An updated groundwater monitoring plan will be developed, reviewed by EPA and implemented within seventy five (75) days of the effective date of this Order, which:

- A. Can immediately detect the presence of hazardous wastes or hazardous waste constituents in the saturated zone(s) coming from any regulated unit.
- B. Assess the rate and extent of the movement, if any, of hazardous waste or hazardous waste constituents in the groundwater. Generally, the updated groundwater monitoring plan should include:
  - i. Location, depth and construction specifications for all proposed monitoring wells.
  - ii. Provisions for evaluating vertical as well as horizontal movement of potential contaminants.
  - iii. Well materials specifications
  - iv. Sampling and analysis plan

7. The Respondent shall submit draft groundwater monitoring plan sections to EPA for review within seventy five days of the effective date of this Order.

8. Upon approval of the updated groundwater monitoring plan, the Respondent shall implement said plan as per the schedule in said plan, pursuant to the terms of paragraph 6, above.

MISCELLANEOUS PROVISIONS

Facility Access

9. SCI shall provide access to the facility to all duly designated EPA officers, employees, or representatives, at all reasonable times, pursuant to Section 3007 of RCRA, 42 U.S.C. §6927. In no event shall the right of entry and inspection of the facility, pursuant to Section 3007 of RCRA, 42 U.S.C. §6927, and all other federal laws and regulations applicable to the facility, be limited by this Order.

Sample Splitting

10. Upon request from EPA, Respondent shall provide duplicate and/or split samples of any and all samples taken at the facility.

Reports

11. Whenever under the terms of this Order, notice or reports are required to be forwarded by one party to another, they shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing to the other parties of another individual designated to receive such communication:

EPA: Richard M. Walka, Chief  
Solid Waste Branch  
U.S. Environmental Protection Agency  
26 Federal Plaza, Room 905  
New York, New York 10278

EQB: Jesus Medero, Director  
Land Pollution Control Area  
Environmental Quality Board  
P.O. Box 11488

RESPONDENT: Dr. Jorge Fernandez  
Resource Management, Inc.  
Firm Delivery  
Ponce, Puerto Rico 00731

RESPONDENT'S

ATTORNEY: Beveridge & Diamond  
Suite 2506  
101 Park Avenue  
New York, New York 10178

Attn: Steven L. Gordon  
Esq.

Consent to this Order

12. Respondent consents to and agrees to comply with this Order, without trial or adjudication of any issues of fact or law. Respondent neither admits nor denies the allegations contained in this Order. Respondent agrees that in any action to enforce the terms of this Order, it will not contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order.

Enforcement Actions

13. Notwithstanding compliance with the terms of this Order, EPA may take such additional actions with respect to Respondent and/or the facility as it deems necessary, pursuant to available statutory authority.

Binding Effect


14. This Order shall be binding upon Respondent, its trustees, receivers, assigns and successors in interest. Respondent shall notify any prospective purchasers of the facility or any portion thereof of the existence of this Order, and shall so notify EPA



Public Records

18. All information produced by Respondent and delivered to EPA in the course of implementing this Order shall be made available to the public, unless identified by Respondent as confidential in the manner set forth in 40 C.F.R. Part 1. Records so identified shall be treated as confidential only in accordance with the applicable confidentiality regulations. In the case of any information provided to the EQB, such information shall be identified as confidential information by Respondent in the manner set forth pursuant to applicable Puerto Rico and federal laws. No sampling and monitoring data or hydrological or geological information shall be considered confidential.

Formal Approval



19. Respondent may, during and after the time provided for development of the Work Plan and subsequent Work Plan submittals confer with EPA on matters relating to the methodology which Respondent intends to submit as part of the Work Plan. No informal advice, guidance, suggestions or comments by EPA and/or its representatives regarding reports, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required herein.

Third Party Actions

20. Nothing contained in this Order shall effect any right, claim, interest, defense, or cause of action.

No Third Party Liability

21. (a) Neither the United States of America nor any agency thereof shall be held out as a party to any contract entered into by Respondent in carrying out activities pursuant to this Order, nor shall the United States of America or any agency thereof be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, its officers, directors, employees, agents, servants, receivers, trustees, successors, assignees, or any other persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants in carrying out activities pursuant to this Order.

(b) Notwithstanding anything to the contrary contained in this Order, Respondent shall not be held liable for any injuries or damages to persons or property resulting from acts or omissions of the EPA, its officers, directors, employees, agents, servants, receivers, trustees, successors or assigns, including any other persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, employed or otherwise assigned by EPA pursuant to this Order.

Incorporation

22. All reports, work plans and other writings required under the terms of this Order, after approval by EPA, are incorporated into this Order. Such modifications to this Order must be in writing. Any such modification shall be incorporated into this Order and shall become effective upon signature by authorized representatives of Respondent and EPA.

Effective Date

23. This Order shall be effective on the next business day following the day on which the Regional Administrator, EPA Region II, signs and dates it.

Delays

24. If any event occurs which causes delay in the achievement of the requirements of this Order, Respondent shall promptly notify EPA orally and shall within 15 days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures. If EPA agrees that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder will be extended by EPA for a reasonable period, which period of time shall not be less than the length or anticipated length of such delay.

Failure to Comply with Order

25. Any failure to comply with this Order, which failure is a result of an act of God, or an act of third parties not under the direction or control of Respondent, or is otherwise caused by circumstances relating to obtaining any permits or approvals, where the Respondent has made all reasonable efforts to obtain such permits or approvals, shall not be a violation of this Order.



Dispute Resolution

26. (a) In the event that EPA and Respondent disagree concerning their rights and obligations under, or concerning the proper interpretation of this Order, representatives of the parties shall confer and attempt expeditiously and in good faith to resolve any such disagreement.

(b) Any conference held pursuant to this paragraph shall be recorded stenographically or in such other manner as the parties may agree. In the event that the parties are able to resolve their disagreement, the terms of such resolution shall be reduced in writing, signed by authorized representatives of each party, and deemed to modify or supersede this Order to the extent of any inconsistency.

(c) In the event that the parties cannot resolve their disagreement, this Order is deemed to be final for purposes of judicial review and enforcement, pursuant to §3013(e) of RCRA, 42 U.S.C. §6934.

Entered as of this 7<sup>th</sup> day of October, 1985 with the agreement and consent of the parties.

U.S. ENVIRONMENTAL PROTECTION AGENCY

By:

Christopher J. Daggett  
CHRISTOPHER J. DAGGETT  
Regional Administrator  
U.S. Environmental Protection Agency  
26 Federal Plaza, Region II  
New York, New York 10278

Date:

10/7/85

RESOURCE MANAGEMENT, Inc.

[Signature]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

P.O. BOX 792

SAN JUAN, PUERTO RICO 00902

October 23, 1985

Steve Gordon, Esq.  
Beveridge & Diamond  
Suite 2506  
191 Park Avenue  
New York, New York 10178

Re: Resource Management, Inc.

Dear Mr. Gordon:

Enclosed, please find an original copy of the Administrative Order on Consent executed for the above-referenced facility. Please note that Dr. Daggett signed the Order on October 7, 1985, rendering October 8, 1985 the effective date for purposes of compliance.

Your continued cooperation in this matter is appreciated.

Sincerely yours,

*Andrew L. Praschak*  
Andrew L. Praschak, Esq.  
Office of Regional Counsel  
Caribbean Field Office

cc: Jesus Medero, EQB (w/attach.)  
Vincent Layas, EQB (w/attach.)  
Charles Anderson, 2AWM-SW (w/attach.)  
Ton Moy, 2AWM-SW (w/attach.)